Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No. 79-972

WESTVACO CORPORATION, PACKAGING CORPORATION OF AMERICA, and GEORGIA-PACIFIC CORPORATION,
Petitioners,

VS.

ADAMS EXTRACT COMPANY, ET AL.,
Respondents.

OBJECTIONS OF PLAINTIFFS-RESPONDENTS TO MOTIONS FOR LEAVE TO FILE BRIEFS AS AMICI CURIAE.

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Plaintiffs-Respondents oppose the motions of Milliken & Company, Milliken Research Corporation and Moulinage et Retorderie de Chevanoz (referred to collectively herein as "Milliken"), Texas Industries, Inc. ("Texas Industries"), Olson Farms, Inc. ("Olson"), and the Mead Corporation ("Mead") for leave to file briefs as *amici curiae*. For the reasons discussed herein, the *amici* motions in question do not satisfy the requirements of Rule 36.3 of the Supreme Court of the United States Revised Rules, because the motions do not "set forth facts or questions of law that have not been, or reasons for believing that they will not adequately be, presented by the parties." Supreme Court Rule 36.3. Accordingly, Plaintiffs-Respondents have withheld their consent to the filing of these briefs and urge the Court to deny these motions.

Not one of the four motions for leave to file briefs as *amici curiae* sets forth questions of law which have not already been raised by the parties to this appeal. For example, contrary to the assertion by movant Milliken that "the briefs submitted by the parties on the petition for *certiorari* have contained relatively little discussion of claim reduction," Milliken motion at vi, the Response in Support of Petition for a Writ of *Certiorari* filed by respondents Weyerhauser Company and Willamette Industries, Inc., was devoted almost entirely to this issue. In addition, the merits briefs recently filed by petitioners have addressed this question at length. Westvaco Corporation ("Westvaco") Br. at 35-38; Georgia-Pacific Corporation ("Georgia-Pacific") Br. at 21-26; Packaging Corporation of America ("PCA") Br. at 5-8.

In addition to the redundancy of the claim reduction argument, Plaintiffs-Respondents oppose the Milliken motion, which deals solely with claim reduction, because claim reduction is not properly before the Court at this time. The question on which a writ of *certiorari* was granted is: whether defendants in antitrust cases may assert rights of contribution. There has never been a final order entered with respect to claim reduction. Therefore, when the petitioners attempted to appeal an earlier interlocutory order of the District Court, denying leave to assert claim reduction as a defense (Joint Appendix at 250-251), the Court of Appeals for the Fifth Circuit dismissed the appeal for lack of jurisdiction. Recently the claim reduction issue was taken up again by petitioners in the District Court, and the issue is presently pending before Judge Singleton.

It would be inappropriate to address the claim reduction argument at this time, before the Court has the benefit of the District Court's final order, and the benefit of consideration of the matter by the Court of Appeals. The question of claim reduction is not ripe for decision on the present record of this case. Furthermore, even if the Court were to permit contribution, the possibility of claim reduction would not have been fore-

closed. Therefore, the matter of claim reduction should be postponed until the District Court has rendered a final ruling and the question is properly posed for the Court's reasoned and thoughtful analysis. Because the Milliken brief dwells exclusively on this issue, Milliken's motion should be denied.

Mead's brief also fails to meet the requirements of Supreme Court Rule 36.3. The Mead motion concedes that "[its] interests in the contribution issue pending before this Court are identical to petitioners'." Motion at 3. Because Mead is a party in MDL 310, its factual circumstances are already before the Court, and it presents no additional facts or questions of law which petitioners have not already adequately briefed. *See* Westvaco Br. at 16-23, 31-34; Georgia-Pacific Br. at 5-21. Accordingly, its motion should likewise be denied.

Finally, the motions of Olson, Milliken and Texas Industries present no reasons for believing that the purported differences in their procedural posture and the legal arguments presented in their cases will not be adequately presented by the parties. Texas Industries' motion does not identify any legal arguments whatever which have not been adequately presented by the briefs filed by petitioners. *See* Westvaco Br. at 11-27; Georgia-Pacific Br. at 5-11, 15-26; PCA Br. at 4-5. Likewise, the purported procedural differences in the *Olson Farms* case (Olson motion at 4-5) are well known to the parties herein. That case and others in which similar procedural considerations have arisen have been extensively discussed by petitioners. *See* Westvaco Br. at 22-23, 25-27. These motions also fail to meet the requirements of Rule 36.3.

Eight briefs have already been filed with the Court in this case, and at least four additional briefs are scheduled for filing by the respondents later this month. It is also likely that the United States will file a brief on the merits of the contribution issue. If the *amici* briefs are accepted, opposing parties in each of those cases may be expected to seek leave to file briefs in

support of their positions and against the four movants. To grant movants leave to file their briefs would cause a profusion of purely cumulative briefs, none of which can reasonably be thought to be helpful to the Court's consideration of the issue presented.

Accordingly, the motions should be denied pursuant to Supreme Court Rule 36.3.

Dated: September 10, 1980

Respectfully submitted,

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